Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

On February 9, 2011, the Federal Communications Commission ("Commission") released a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("NPRM/FNPRM") seeking comment on a broad range of issues relating to modernization of federal universal service funding and intercarrier compensation ("ICC") in light of the nation's increasing focus on promoting widespread availability of broadband service.[1] The Washington

[1] *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up,* WC Docket No. 10-90, GN Docket No. 09-51, WE Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92,

Utilities and Transportation Commission ("UTC") previously submitted comments on Section XV of the NPRM/FNPRM regarding potential efforts and rule changes intended to reduce inefficiencies and waste surrounding the nation's intercarrier compensation system. Here, the UTC responds to several issues raised in the remaining sections of the NPRM/FNPRM. In particular, the UTC addresses (1) the need for a continuing and expanded role for state utility commissions in facilitating federal efforts to make an effective and efficient transition from a narrowband to broadband environment, and (2) reasonable and appropriate means to encourage states to undertake or continue efforts to accomplish intrastate access charge reform.

I. State Commissions Remain Important Partners For Preserving And Advancing Universal Service As The Nation Transitions To A Broadband Era.

Throughout the NPRM/FNPRM, the Commission seeks comment on the role of state commissions in advancing universal service during the transition to the Connect America Fund ("CAF") and other federal rule and policy changes designed to promote widespread availability of broadband services at affordable prices. As the Commission considers measures to shift federal funding from narrowband voice service to broadband service, it asks interested parties to address appropriate changes to the federal-state partnership involving advancement of universal service.[2]

The Commission recognizes that, presently, state commissions have the responsibility to designate eligible telecommunications carriers ("ETCs") that are allowed to receive federal universal service funding in accordance with Commission-imposed designation criteria. It seeks comment on whether the ETC designation process, as presently administered is sufficient, or

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CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, Released February 9, 2011. (NPRM/FNPRM)

[2] *Id*, ¶84.

should be modified in some way as it proceeds with federal universal service funding reforms, including the CAF.[3] Alternatively, the Commission asks whether it should apply its forbearance authority pursuant to Section 10 of the Telecommunications Act of 1996[4] ("1996 Act") and thereby remove state commission involvement from the process that may be applied prospectively to entities seeking federal universal service funding support including awards that may be made under the CAF program.[5] Elsewhere, the Commission seeks comment on the role of states and Tribal governments in enforcing any public interest obligations that are imposed on universal service funding recipients, whether other state agencies should be responsible for enforcement in the absence of state commission authority to do so, and where funding for administration and enforcement will come from if states and Tribal governments participate in any enforcement and oversight process.[6] As to CAF expenditures made to support broadband infrastructure investment in areas where broadband service is not available, the Commission seeks comment on the role of state commissions and Tribal governments in monitoring compliance with the public interest obligations of CAF recipients and whether states and Tribal governments should be allowed to establish additional public interest obligations on CAF recipients.[7]

The UTC strongly urges the Commission to embrace a meaningful and clear role for state commissions. In Washington, during the fifteen years following passage of the 1996 Act, the UTC has overseen a rigorous ETC designation and recertification process as part of its statutory

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[3] *Id*, ¶89.

[4] 47, U.S.C. § 160(a).

[5] NPRM/FNPRM, ¶89.

[6] *Id,* ¶155.

[7] *Id*, ¶315.

obligation to assist the Commission in determining those carriers that meet eligibility criterion and in evaluating the use of federal universal service funding. The UTC has carried out its responsibilities in a thoughtful and deliberative manner, pursuant to which, carriers have been designated eligible for federal funding in accordance with the Commission's universal service rules[8] and companion rules in Washington reflecting the UTC's procedures for fulfilling its federal statutory obligations.[9] Under UTC procedures, requesting entities are required to provide a range of basic information demonstrating compliance with Commission and UTC requirements. Additionally, UTC Staff often requests additional information and clarification of specific attributes of a petition in order to evaluate the merits of the applicant's petition. The UTC's goal has never been to deter applicants from seeking ETC designation and access to federal universal service funding. Rather, its objective has been to scrutinize petitions to ensure consistency with public policy s and to ensure that approved applicants utilize funding in an appropriate and efficient manner.[10]

As shown in Exhibit B, over the past fifteen years, thirty-eight telecommunications carriers in forty-three proceedings have sought and received ETC designation by the UTC.

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[8] 47 C.F.R., § 54(c) – Universal Service.

[9] *See* WAC 480-123, Universal Service. A copy of these rules is attached as Exhibit A to these comments. To a large extent, Washington's ETC rules mirror the Commission's requirements including annual reports on local service outages, unfulfilled service requests, consumer complaints, and wireless network maps. However, they go beyond Commission requirements in a number of ways including the number of hours of back-up power a wireless ETC must have in place at cell sites, microwave hub, and switch. Washington also requires ETCs to provide two-year investment plans on a rolling basis.

[10] UTC Staff does not take ETC petitioners' general compliance statements at face value. Rather, Staff scrutinizes applicants' credentials and commitments in fulfilling universal service obligations. Staff's inquiries include applicants' financial condition, corporate structure, detailed coverage in proposed service areas, capital investment plans, operational performance (e.g., subscribership, spectrum of services and products, consumer complaint records), and compliance with other state rules and regulations. In doing so, UTC Staff attempts to balance the potential benefits of designating additional ETCs (most saliently, infrastructure build out in rural areas, promoting market competition and benefits for low income households) with the need to protect the Federal Universal Service Fund against waste, fraud and abuse. Over the past fifteen years, Staff has made favorable and unfavorable recommendations to the UTC on various ETC petitions reflecting application of above-described framework and principles.

Some of the designations included specific conditions adopted by the UTC to assure a designation is in the public interest and complies with the Commission's ETC requirements as well as corresponding UTC rules governing universal service.[11] Other carriers have been denied designation or otherwise chose to withdraw their petitions as a consequence of the UTC's evaluation process.[12]

The UTC's efforts do not end with the approval process. Many ETCs are subject to post-designation filing requirements including annual reports concerning use of federal universal service funding, a description of the benefits to consumers of such expenditures, and annual forecasts of prospective use of federal funding over the following year.[13] Additionally, wireless ETCs are required to submit every three years maps showing effective coverage areas in Washington including areas of expansion as a consequence of receiving federal universal service funding.

In sum, like other state commissions, the UTC has taken its ETC designation role seriously and served as an effective partner to the Commission in promoting and preserving universal service. The UTC urges the Commission to build on this legacy by adopting an even stronger role for state commissions as it looks to implement new measures to disburse federal

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[11] *See, In the Matter of the Petition of TracFone Wireless, Inc., for Designation as an Eligible Telecommunications Carrier for the Limited Purpose of Providing Lifeline Service,* UT-093012. In this proceeding, the UTC adopted a number of conditions regarding the applicant's intended wireless lifeline service offerings in Washington including procedures governing verification of potential lifeline consumer's income eligibility, recordkeeping requirements, and availability of service options. After a considerable review process, the applicant consented to the public interest requirements proposed by Staff as a condition of UTC approval of its ETC designation petition.

[12] In Washington some ETC petitioners sought designation from the UTC before serving a single telephone subscriber in Washington and specifically sought designation as part of its efforts to obtain financial backing for its contemplated voice service offerings. *See, In the Matter of the Petition of Eltopia Communications, LLC For Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2),* UTC Docket No. UT-073024.

[13] After the review of carriers' filings, UTC commissioners and staff may meet with representative of selected ETCs to discuss issues of concern, particularly those ETCs who appear to have elevated levels of capital expenditures. Such meetings allow the commissioners and staff to obtain more in-depth understanding of each ETC's Washington operation and its use of federal high cost support.

universal service funding, including CAF funding. State commissions are well-versed in the telecommunications and broadband needs of their states, are closer to the ground, and have existing relationships with entities operating in their states. Their historic role as guardians of access to universal service funding should be extended and amplified in a broadband era as the Commission looks to improve efficiency in the federal funding system and retarget support to entities meeting new funding criteria. Regardless of whether the Commission implements a reverse auction approach to prospective universal service funding, it should recognize that state commissions can and should remain effective collaborators and front-line participants in evaluating and applying federal requirements for broadband funding. For example, state commissions could continue to act as the qualifying agents for the Commission in a process that mirrors the present ETC designation approach.[14] State commissions, subject to state statutory authority, could also conduct routine yet detailed examinations of funding recipients for compliance with federal spending, service performance, public interest obligations, and build-out requirements. Finally, state commissions could also be used to investigate and gather information concerning availability and affordability of broadband services.

The UTC urges the Commission to embrace state commission involvement as a necessary component of its plan to transform the nation's telecommunications universal service policies to reflect a broadband environment.

II. The Commission Should Adopt a Broad View of the Extent to Which States Have Accomplished Intrastate Access Charge Reform.

As part of its intention to modernize existing rules concerning intercarrier compensation,

[14] In this regard, state commissions could receive applications, review them for completeness, investigate missing or incomplete information, and provide initial or final certification to the Commission for participation in federal funding.

the Commission seeks comments on the extent to which states have accomplished intrastate access charge reform. Where reform has not occurred, the Commission also seeks comment on two options that it could implement to provide incentives to states to achieve access charge reform.[15] The first is a four year transition period during which state commissions would be allowed to transition intrastate access charge rates to interstate rates. After that, the Commission would use the reciprocal compensation provisions of the 1996 Act to effectively mandate reductions. The second is a unification of all intercarrier compensation rates under the Commission's authority of the reciprocal compensation provisions of the 1996 Act to prescribe a methodology for states to follow.[16]

The first reform option envisions some level of partnership with the states to accomplish intrastate rate reductions while the second option would be compulsory in some fashion. As an incentive to encourage states to reduce intrastate access charges to interstate levels, the Commission also seeks comment on whether it would be appropriate to award initial CAF funding only to those states that have accomplished reform to some degree and refrain from awarding funding to states where little or no reform has occurred.[17]

Regardless of which policy option is embraced for intrastate access reform, and as the Commission looks to transition intercarrier compensation rates to a lower and unified rate structure, it should recognize that past state efforts at reform have been achieved in varying degree and by differing means. The Commission should not presuppose the appropriate structure and method used by any particular state to accomplish such reforms. As the Commission notes, some states have reduced intrastate rates significantly (to or near interstate levels) and

[15] NPRM/FNPRM, ¶¶ 533 – 555.

[16] *Id.*

[17] *Id,* §544. The Commission clearly recognizes the difficulty in determining if a state has undertaken intrastate access reform and prescribe a specific standard or schedule for implementing reform.

established specific state universal service funds or access replacement mechanisms.[18] Other states have accomplished access reform without resorting to such measures.[19] And, unfortunately, a few states have made little or no progress towards access charge reform despite broad consensus to move in that policy direction.

In Washington, the UTC has achieved significant intrastate access charge reform over the three decades since access charges were first established. Its efforts have, by necessity, been a gradual and deliberate undertaking reflecting consideration of various policy and economic factors. As explained below, over time the UTC has undertaken various steps to address the deficiencies of the intrastate access charge system by looking to require end-users to bear a greater proportion of the cost of the local network in order to make more rational choices in their use of telephone services.[20] Although intrastate access charge rates in Washington do not generally mirror interstate rates today, the UTC has imposed or otherwise accomplished significant intrastate reductions as opportunities or circumstances arose.

For example, in April 1996, the UTC ordered substantial reductions to Qwest's intrastate switched access rates, finding that:

> The reduction in access rates can be expected to have substantial economic benefit for residential and business customers of this state. Toll calls are a substantial portion of the total telephone bill of many customers, and this reduction will make their overall telephone service more affordable.[21]

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[18] *Id*, ¶543.

[19] *Id.*

[20] Until the mid- to late-1990s, the UTC's policy focus was on reducing the non-traffic sensitive (NTS) allocations of ILEC fixed costs and recovery of such costs from the usage based intrastate access charge regime. Subsequently, the policy debate shifted to the appropriate recovery approach for traffic sensitive (TS) costs under the intrastate access charge regime with establishment of a distinction between terminating and originating intrastate access rates.

[21] *See Wash. Util. & Trans. Comm'n v. U.S. West Comm.*, Docket No. UT-950200, Fifteenth Supplemental Order at 112 (1996).

Two years later in a proceeding involving the adoption of WAC 480-120-540, a new rule requiring ILECs to reduce their terminating switched access rate elements to levels approaching their costs for providing the services, the UTC set limits on the intrastate terminating access charge rates that all telecommunications carriers could impose on long-distance carriers. In adopting the rule, the UTC specifically determined that implicit contributions should be removed from terminating intrastate switched access charges in order to encourage long-distance competition and enhance marketplace efficiency.[22] As an interim measure, the UTC permitted ILECs to maintain their existing revenue stream by assessing an "interim universal service charge" on terminating traffic. The UTC's intention was clear, ILECs were to adjust or eliminate interim universal service charges over a reasonable, albeit short-term, basis. Adopting the rule was a step forward in moving the state's intercarrier compensation scheme toward a more competitive environment.[23]

A few years later the UTC addressed a complaint filed by AT&T alleging that Verizon Northwest's intrastate access charge rates violated Washington law. In that proceeding, the UTC eventually ordered Verizon Northwest to substantially reduce its intrastate switched access charges (both originating and terminating). In its final order, the UTC observed that "competitive circumstances have changed radically" since Verizon Northwest's rates had been established, The UTC continued: "we – and Verizon – must face the competitive realities of the 21st century and bring access charges more in line with current conditions." In particular, the

[22] The terminating access charge rule explicitly recognizes that parity between intrastate access charges and local interconnection services is desirable, given the legal authority to accomplish such an outcome. The UTC also agrees that parity between interstate access charges and local interconnection services is a lofty, yet principled-based, goal, as well.

[23] On March 6, 2003, the Washington State Supreme Court, in a unanimous 9-0 decision, upheld the validity of the Commission's access charge reform rule (WAC 480-120-540). In upholding the rule, the Court found that the rule does not "set rates" in violation of the Commission's rulemaking authority, and found that the rule is not arbitrary or capricious. *Washington Indep. Tel. Ass'n v. Washington Util. & Transp. Comm'n,* 148 Wn.2d 887, 64 P.3d 606 (2003).

UTC found that:

> The excess charges of Verizon allow it to export costs of the Verizon local network to the customers of Qwest and/or the interexchange companies that offer intrastate toll service. Verizon's pricing structure results in some combination of higher profits and lower rates for its local exchange services. It also can distort competition in the long-distance market to the disadvantage of any company that chooses to offer long-distance service to Verizon's local exchange customers. This is unjust, unfair, and unreasonable.[24]

Based on that analysis, the UTC concluded that Verizon's then-existing access charge rates gave it an undue preference, and that the charges subjected AT&T to a competitive disadvantage.

Similarly in a complaint involving the level of Embarq's intrastate access charges, the UTC found that:

> [h]igher intercarrier compensation, such as the disputed intrastate access charges at issue in this proceeding, have traditionally supported and promoted lower local telephone rates particularly in the more rural and remote operating areas served by Embarq. Yet lower intercarrier compensation rates require carriers to recover more of their ongoing investment and operating costs from their own end users, a condition that is clearly necessary in an increasingly competitive market. As competition supplants traditional monopoly-based delivery of telecommunication services there is a compelling need to revisit this balance, particularly the intercarrier compensation rates that competing companies impose on each other.[25]

Once again, in response to market conditions, the UTC sought, where possible, to address legacy intercarrier compensation matters by requiring adjustments to intrastate access charge rates to align them with the economic principle that costs should be more directly recovered in the way they are incurred.

Most recently, the UTC required CenturyLink's intrastate access charges to be reduced to prevent harm to the long distance market in Washington. The reduction was imposed as a condition of CenturyLink's acquisition of Qwest and reflected the UTC's concerns about the

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[24] *AT&T Communications of the Pacific Northwest, Inc., vs. Verizon Northwest, Inc.,* Docket No. UT-020406, Eleventh Supplemental Order, ¶ 39 (Aug. 12, 2003).

[25] *See, Verizon Select Services, Inc.; MCImetro Access Transmission Services, LLC; MCI Communications Services, Inc.; Teleconnect Long Distance Services and Systems Co. d/b/a Telecom USA; and TTI National, Inc., v. United Telephone Company of the Northwest, d/b/a Embarq,* Docket UT-081393, Order 05 (November 13, 2009).

prospect of a smaller entity, CenturyLink, assuming ownership and control of a much larger entity, Qwest, including all of its obligations. In the CenturyLink – Qwest merger proceeding, the UTC adopted the principle that, where possible, arbitrary distinctions between all CenturyLink operating companies in Washington (including Qwest) should be eliminated so that they are treated as a common entity with respect to their public interest obligations. Requiring CenturyLink to reduce its existing intrastate access charge rates to Qwest's levels was one consequence of the application of this principle.[26]

Finally, there is a distinct possibility for additional access charge rate reductions, particularly for some or all of Washington's smaller ILECs in the near term. In response to a recent inquiry from several members of the Washington Legislature, the UTC undertook an examination of current state universal service policy.[27] That review and subsequent discussions between representatives of the smaller ILECs in Washington may lead to a process that allows examination of the financial condition of these companies. Such a course of action could result in a UTC recommendation to the Washington Legislature to create a state universal service fund that would be implemented in conjunction with intrastate access charge reductions.

The Commission should view this set of UTC actions as a demonstration of significant progress in Washington towards reforming the state's intercarrier compensation regime. As shown in Exhibit C, intrastate access charge rates in Washington have been reduced significantly over the past three decades and now approach, but are not yet equal to, interstate levels. Reductions to the intrastate access rates of Washington's smaller ILECs are currently under

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[26] *See* Order 14, Docket No. UT-100820, Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction, March 14, 2011. (Final Order) On April 13, 2011, CenturyLink filed a complaint in US District Court, challenging several issues in the Final Order including the intrastate access charge reduction. *See, CenturyLink, Inc. v. Wash. Utils. & Transp. Comm'n*, No. 2:11-cv-00633-RAJ (W.D. Wash.).

[27] *See* Report Reviewing State Telecommunications Policies on Universal Service, Docket No. UT-100562, November 29, 2010.

consideration and may be reduced depending on the UTC's earnings review process that is presently underway.

The UTC supports the Commission's efforts to reform intercarrier compensation, including its efforts to rationalize the system by moving to a common rate structure applicable to all forms of telecommunications traffic (albeit a structure that continues to abide by the legal authorities of the Commission and state commissions). As IP-based traffic increasingly supplants traditional TDM-based traffic, the current system, which compartmentalizes various types of traffic, is simply unsustainable. Nevertheless, due to the complexity of the issues and the differences in approaches to intrastate access reform among the states, the UTC encourages the Commission to adopt general principles and a broad course of action for states to follow and engage in their own legal and policy proceedings to the extent possible and in accordance with a reasonable transition period.[28]

As the Commission clearly understands, the evolution of intrastate access reform measures has taken different paths in different states. Those paths reflect differences in state laws and institutions, cost characteristics of the ILECs operating in each state, and pre-reform levels of intrastate access charges affecting "rural" ILECs compared with those affecting "urban" ILECs. These differences reflect the latitude that each state commission has to determine what access reform looks like, the pace at which access reform can be implemented, and how far access reform can go to bring intrastate rates in line with interstate levels. While it is reasonable and preferable for the Commission to institute incentives and time lines for intercarrier compensation reform, the Commission should resist the inclination to dictate the exact course of

[28] The Commission asks parties whether four years is a practical timeframe for state commission action on intrastate access charge reform. The UTC believes that four years is a reasonable period over which intrastate rates in Washington could be brought to interstate levels. Other states may require additional time depending on each state's starting rate levels and the extent to which reform efforts have already been implemented or are underway.

state access reform, e.g., the institution of state universal or access replacement funds or adoption of a state subscriber line charge. In Washington, access charges levied by large ILECs operating in the state have been dramatically reduced over the past ten years, and, the UTC is currently actively engaged in further efforts at reform focused primarily on smaller rural ILECs.

Accordingly, as it considers the extent of reform and weighs adoption of incentives to spur additional reforms by state commissions, the Commission should look carefully at the specific facts and circumstances of each state. There should be no preconceived view by the Commission regarding the exact model or framework that has or may be used by a state to meet the Commission's intention to accomplish intercarrier compensation reform. Any effort that effectively preempts state authority by classifying all traffic, including intrastate traffic, under the rubric of reciprocal compensation would be an unwise and unfortunate step backward for federal-state relations. Although a "one-size fits all" approach may be appealing in accomplishing intrastate reform, the UTC believes states should be provided significant flexibility in accomplishing reform. Allowing states to pursue the joint goals of transitioning to broadband environment, including universal service and intercarrier compensation reform in tandem with the Commission, will, in the end, produce a more constructive long-term partnership. Accordingly, the UTC believes that any incentive-based approach adopted by the Commission, such as tying early CAF support to states where reform has been implemented, should not dictate a single approach to qualify a state for CAF or other universal service funding support.

III. CONCLUSION

The UTC supports the Commission's efforts to adopt new policies reflecting the nation's increasing focus on broadband services, including changes to the nation's universal service support mechanisms and intercarrier compensation regimes. It strongly suggests that in these new policies, the Commission retain or even enhance the traditional role of state commissions in designating entities eligible for universal service funding and compliance with federal requirements for such funding. Additionally, the UTC urges the Commission to avoid prescriptive approaches to intrastate access reform by classifying all traffic as reciprocal compensation. Instead, it should continue to respect the dual responsibilities of the Commission and states in setting access charges by adopting an approach that provides sufficient time for state commissions to accomplish further reform appropriate to the particular circumstances within their jurisdictions.

Respectfully submitted this 18th day of April, 2011

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